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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,677	12/01/2003	William Michael Kelly	CL/V-32781B	2379

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CIBA VISION CORPORATION  
PATENT DEPARTMENT  
11460 JOHNS CREEK PARKWAY  
DULUTH, GA 30097-1556

EXAMINER
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VARGOT, MATHIEU D

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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07/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/724,677

Applicant(s)

KELLY ET AL.

Examiner

Mathieu D. Vargot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,7-10,12,15-18,20,21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,7-10,12,15-18,20,21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/25/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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1. Claims 1, 3, 7-10, 12, 15-18, 20, 21 and 23-25 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 11; claim 12, line 9; claim 20, line 7; and claim 23, line 8, "transmission" should be changed to --transmissive--. In claim 12, line 6, "mask collar have" should be changed to --masking collar has--. Also, it is not clear how instant claim 16 further limits claim 12. Claim 12 already recites that the masking collar resembles a donut or washer—such structures would generally be considered rings—and that the transmissive portion is located within a center hole, so it would have to be disc-shaped.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbrechtsmeier et al (the US equivalent of PCT WO 99/20455) in view of Winterton et al (See col. 8, lines 31-54).

The primary reference discloses the basic claimed molding system with a first mold component being a male mold having a masking collar (see mask 8) that resembles a washer or donut, wherein the masking collar is mounted within a sleeve (see mold parts 9 and 10) that would include the instant "bushing sleeve". The primary reference essentially fails to teach that the transmissive portion is pressed into the center opening of the collar and that the second mold component has a UV absorber. Concerning the

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former, the primary reference teaches that the mask is a chromium metal or other metal oxide mask, and it would have been obvious to one of ordinary skill in the art to press the transmissive portion of the mold into the center hole of the mask. Winterton et al teaches making a second, female mold part with UV absorptive material, and such would have been obvious on the molding system of the primary reference to facilitate the curing of the lens.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 7-10, 12, 15-18, 20, 21 and 23-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 8-11 and 16 of copending Application No. 10/732,566. Although the conflicting claims are not identical, they are not patentably distinct from each other

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because they set forth essentially the same subject matter concerning a masking collar in cooperation with a mold profile mounted in a bushing sleeve.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4.Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Upon careful review of the instant claims, an art rejection has been made on instant claims 20 and 21, such claims primarily being rejected in that they do not contain the recitation of the masking collar being a polymeric material impregnated with a carbon black filler, such generally believed to be allowable in combination with the other aspects of the claims. Should applicant put this limitation into claim 20, the art rejection would be dropped. Also, there are minor 112 issues and a double patenting rejection over copending application 10/732,566 that need to be addressed. An obviation of these rejections would place the application in condition for allowance.

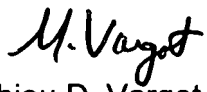
5.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 6 to 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot  
July 5, 2007

  
Mathieu D. Vargot  
Primary Examiner  
Art Unit 1732

7/5/07